

SUPPLEMENT NO. 1 TO TRUST INDENTURE

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by and between

Louisville/Jefferson County Metro Government

and

The Bank of New York Mellon Trust Company, N.A.  
(as successor to J. P. Morgan Trust Company, National Association)  
as Trustee

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securing the

\$13,910,000

Louisville/Jefferson County Metro Government  
Student Housing Industrial Building  
Revenue Bonds (ULH, Inc. – University of Louisville, Phase III Project), Series 2005A

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DATED AS OF SEPTEMBER 1, 2009

## SUPPLEMENT NO. 1 TO TRUST INDENTURE

This SUPPLEMENT NO. 1 TO TRUST INDENTURE (the "Supplement"), made and entered into as of the 1<sup>st</sup> day of September, 2009, by and between LOUISVILLE/JEFFERSON COUNTY METRO GOVERNMENT (the "Issuer"), a consolidated local government and an agency and instrumentality of the Commonwealth of Kentucky (the "Commonwealth") with the powers, among others, set forth in Sections 103.200 through 103.285 of the Kentucky Revised Statutes, as amended (the "Act"), and THE BANK OF NEW YORK MELLON TRUST COMPANY, N.A. (as successor to J.P. Morgan Trust Company, National Association), a national banking association, duly authorized to accept and administer trusts of the character hereinafter set forth, as Trustee (the "Trustee"),

### WITNESSETH:

WHEREAS, the Issuer served as issuer of the \$13,910,000 Louisville/Jefferson County Metro Government Student Housing Industrial Building Revenue Bonds (ULH, Inc. – University of Louisville, Phase III Project), Series 2005A (the "Bonds"), among other bonds, pursuant to the Trust Indenture (the "Original Indenture"), dated as of August 1, 2005, by and between the Issuer and the Trustee; and

WHEREAS, the Issuer issued the Bonds on August 17, 2005 for, among other reasons, the purpose of funding the cost of construction, equipping, furnishing and installation of a 4-story student housing facility with approximately 359 beds and recreational and meeting rooms on property located at 2033 South Fourth Street, Louisville, Kentucky and now known as the Community Park Student Housing Project ("Community Park"); and

WHEREAS, under Section 5.05(b) of the Original Indenture all proceeds of the Bonds and investment earnings thereon held in the Construction Fund (as defined in the Original Indenture) if not used for capital improvements to the projects were to be used to redeem the Bonds on or before August 16, 2008; and

WHEREAS, pursuant to 26 C.F.R. §1.148-2(e)(2)(ii) of the Internal Revenue Code of 1986, as amended, the 3-year expenditure requirement, which would have ended August 16, 2008, may be extended to a 5-year period, which would end August 16, 2010, so long as the Issuer and a licensed architect or engineer certify that the 5-year period is necessary to complete the project at Community Park; and

WHEREAS, Luckett & Farley, who served as both architect and engineer for the Community Park project have indicated in a letter dated June 30, 2009 that the remaining Bond proceeds will be used for a critical phase of the project consisting of a series of sidewalks to connect the west side of the University of Louisville campus to Community Park for which the remaining funds in the Construction Fund can be used to pay a portion of the cost of such construction; and

WHEREAS, ULH, Inc. (the “Company”), a non-profit corporation organized and existing under the laws of the Commonwealth, leases and operates Community Park as student housing for the University of Louisville and desires to have the expenditure of the remaining funds in the Construction Fund for the walkway completion; and

WHEREAS, Section 12.01 of the Original Indenture provides for the amendment of the Indenture without the consent of the bondholders in connection with any change that in the judgment of the Trustee does not prejudice or materially adversely affect the bondholders or impair the Security (as defined in the Original Indenture);

NOW, THEREFORE, KNOW ALL MEN BY THESE PRESENTS, THIS SUPPLEMENT NO. 1 TO TRUST INDENTURE WITNESSETH:

1. Section 5.05 of the Original Indenture is hereby amended to read as follows:

**Section 5.05 Construction Fund.**

(a) There is hereby created by the Issuer and ordered established with the Trustee a trust fund to be designated the “Construction Fund,” which shall be used solely for the purposes set forth in this Section 5.05. Within the Construction Fund, there are hereby created by the Issuer and ordered established two separate accounts designated as the “2005A Account” and the “2005B Account.” There shall be deposited into the “2005A Account” from the sale of the Series 2005A Bonds the amount specified in Section 6.01 hereof. There shall be deposited in the “2005B Account” monies transferred pursuant to the provisions hereof, representing proceeds of or investment earnings on the proceeds of the Series 2005B Bonds. The Trustee shall deposit in the Construction Fund as and when received by the Trustee any moneys paid to the Trustee under the Loan Agreement or this Indenture for credit or transfer to the Construction Fund. Moneys in the Construction Fund shall be expended first from the 2005A Account for Costs of Construction in accordance with the provisions of the Loan Agreement, particularly Section 4.3 of the Loan Agreement. Moneys in the Construction Fund shall be disbursed upon receipt of a requisition for payment substantially in the form of Exhibit C or Exhibit D attached hereto which, by this reference thereto, are incorporated herein, executed by the Authorized Company Representative and the Developer as required and the Trustee is hereby authorized and directed to issue its checks for each disbursement upon receipt of such a requisition. The Trustee is hereby authorized and directed to issue its checks for each disbursement required by the aforesaid provisions of the Loan Agreement.

(b) All proceeds of the Series 2005A Bonds, and investment earnings thereon, remaining in the 2005A Account of the Construction Fund on the Completion Date, less amounts retained or set aside to meet costs not then due and payable or which are being contested, shall be used for capital improvements to the Project, and if not used for such purpose, shall be transferred to the Redemption Fund by the Trustee in sufficient time to be used to redeem Series 2005A Bonds on or before August 16, 2010. All proceeds of the Series 2005B Bonds, and investment earnings thereon, remaining in the 2005B Account of the Construction Fund on the Completion Date, shall be used for improvements to the Project.

2. With the exception of the amendment to Section 5.05 of the Original Indenture, the Original Indenture remains in full force and effect without modification thereto.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the parties hereto have caused this Supplement No. 1 to Trust Indenture to be executed in their respective names and on their respective behalves by their respective duly authorized officers as of the day and year first above written.

\_\_\_\_\_  
Kathleen J. Herron, Metro Council Clerk

\_\_\_\_\_  
David W. Tandy, President of the Council

\_\_\_\_\_  
Jerry E. Abramson, Mayor

Approved: \_\_\_\_\_  
Date

APPROVED AS TO FORM AND LEGALITY:

Mike O'Connell  
Jefferson County Attorney

By: \_\_\_\_\_

Title: \_\_\_\_\_

ATTEST:

\_\_\_\_\_  
Kathleen J. Herron  
Metro Council Clerk

THE BANK OF NEW YORK MELLON TRUST  
COMPANY, (AS SUCCESSOR TO J. P.  
MORGAN TRUST COMPANY, NATIONAL  
ASSOCIATION), as Trustee

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_